

David J. McGlothlin, Esq. (SBN 026059)
david@westcoastlitigation.com
Hyde & Swigart
2633 E. Indian School Road, Ste. 460
Phoenix, AZ 85016
Telephone: (602) 265-3332
Facsimile: (602) 230-4482

Ryan L. McBride, Esq. (SBN 032001)
ryan@kazlg.com
Kazerouni Law Group, APC
2633 E. Indian School Road, Ste. 460
Phoenix, AZ 85016
Telephone: (800) 400-6808
Facsimile: (800) 520-5523

Attorneys for Plaintiff and Putative Class

**United States District Court
District of Arizona**

Aaron Ham, individually and on behalf of all others similarly situated,	}	Case No.:
		COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF PURSUANT TO THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, ET SEQ.
Plaintiffs,		
v.	}	
U.S. Auto Credit Corporation,		Jury Trial Demanded
Defendant		

Introduction

1. Aaron Ham ("Plaintiff"), brings this Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of U.S. Auto Credit Corporation ("Defendant"), in negligently and/or intentionally contacting Plaintiff on Plaintiff's cellular telephone via

1 text messages, in violation of the Telephone Consumer Protection Act, 47
 2 U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff
 3 alleges as follows upon personal knowledge as to himself and his own acts
 4 and experiences, and, as to all other matters, upon information and belief,
 5 including investigation conducted by his attorneys.

6 2. The TCPA was designed to prevent texts like the ones described within this
 7 complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous
 8 consumer complaints about abuses of telephone technology – for example,
 9 computerized calls dispatched to private homes – prompted Congress to pass
 10 the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

11 3. In enacting the TCPA, Congress intended to give consumers a choice as to
 12 how creditors and telemarketers may call them, and made specific findings
 13 that “[t]echnologies that might allow consumers to avoid receiving such calls
 14 are not universally available, are costly, are unlikely to be enforced, or place
 15 an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11.

16 **Jurisdiction and Venue**

17 4. This Court has federal question jurisdiction because this case arises out of
 18 violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*,
 19 132 S. Ct. 740 (2012).

20 5. Venue is proper in the United States District Court for the District of Arizona
 21 pursuant to 18 U.S.C. § 1391(b) because Defendant is subject to personal
 22 jurisdiction in the County of Maricopa, State of Arizona because it conducts
 23 business is in the County of Maricopa, State of Arizona.

24 **Parties**

25 6. Plaintiff is, and at all times mentioned herein was, a resident of the City of
 26 Surprise, County of Maricopa, State of Arizona.

27 7. Plaintiff is, and at all times mentioned herein was, a “person” as defined by
 28

1 47 U.S.C. § 153 (39).

2 8. Defendant is located in the City of Lake Worth, in the State of Florida.

3 9. Defendant Transcend is believed to be the parent company of US Degree
4 Search and is located in the City of Jacksonville, State of Florida.

5 10. Defendants are, and at all times mentioned herein were, corporations and
6 each was a “person,” as defined by 47 U.S.C. § 153 (39).

7 11. At all times relevant, Defendants conducted business in the State of Arizona
8 and in the County of Maricopa, within this judicial district.

9 **Factual Allegations**

10 12. From May 2018 through July 2018, Defendant sent texts to Plaintiff on
11 Plaintiff’s cellular telephone number ending in 3824 via an “automatic
12 telephone dialing system” (“ATDS”), as defined by 47 U.S.C. § 227(a)(1),
13 using an “artificial or prerecorded voice” as prohibited by 47 U.S.C. §
14 227(b)(1)(A).

15 13. This ATDS has the capacity to store or produce telephone numbers to be
16 called, using a random or sequential number generator.

17 14. Prior to June 2017, Plaintiff purchased a vehicle (the “Vehicle”).

18 15. The Vehicle was financed by Defendant.

19 16. Subsequent to the purchase of the Vehicle, but prior to November 2017,
20 Plaintiff allegedly defaulted on his payments to Defendant.

21 17. In or around November 2017, Defendant initiated and executed a
22 repossession of the Vehicle from Plaintiff.

23 18. Plaintiff has not reclaimed and does not intend to reclaim the Vehicle.

24 19. On or about May 22, 2018 and June 1, 2018, Plaintiff received the same text
25 message each day on his cellular telephone from the number 77965.

26 20. The text messages stated the following:
27
28

1 Urgent! We do not have your current NO_INSURER
2 insurance information on file. Fax an updated insurance
3 info to (866) 566-3336. U.S. Auto Credit
4

5 21. Plaintiff responded to both texts separately clearly indicating that he wanted
6 Defendant to stop texting him.

7 22. On June 1, 2018, Defendant responded with the following text message to
8 Plaintiff's cellular telephone:
9

10 You have opted-out and you will no longer receive
11 messages from auto financing company. Reply HELP for
12 more info.
13

14 23. Despite Defendant telling Plaintiff he would no longer receive messages from
15 Defendant, on June 13, 2018 at 8:28 AM Plaintiff received another text
16 message from Defendant from the number 77965 stating the following:
17

18 Urgent! We do not have your current NO_INSURER
19 insurance information on file. Fax an updated insurance
20 info to (866) 566-3336. U.S. Auto Credit
21

22 24. Plaintiff received multiple SMS text messages from Defendant before May
23 22, 2018 and responded that he no longer wished to receive the text
24 messages.

25 25. Upon information and belief, the SMS text messages were sent using
26 equipment that had the capacity to store or produce telephone numbers to be
27 called using a random or sequential number generator, and to dial such
28

1 numbers, and was therefore an automatic telephone dialing system (“ATDS”)
2 as defined by 47 U.S.C. § 227(a)(1).

3 26. Upon information and belief, the SMS text messages were sent using
4 equipment that can send a text message to cellular telephone numbers stored
5 as a list or database without human intervention.

6 27. Plaintiff revoked any consent Defendant may have had previously on May
7 22, 2018, if not previously, pursuant to 47 U.S.C. § 227 (b)(1)(A).

8 28. Through Defendant’s aforementioned conduct, Plaintiff suffered an invasion of
9 a legally protected interest in privacy, which is specifically addressed and
10 protected by the TCPA.

11 29. Plaintiff was personally affected by Defendant’s aforementioned conduct
12 because Plaintiff was frustrated and distressed that, Defendant interrupted
13 Plaintiff with an unwanted text message using an ATDS.

14 30. Defendant’s text messages forced Plaintiff and other similarly situated class
15 members to live without the utility of their cellular phones by occupying their
16 cellular telephone with one or more unwanted calls, causing a nuisance and
17 lost time.

18 31. Defendant’s text messages to Plaintiff’s cellular telephone number was
19 unsolicited by Plaintiff and without Plaintiff’s permission.

20 32. Plaintiff is informed and believes and here upon alleges, that the text messages
21 were sent by Defendant and/or Defendant’s agent(s), with Defendant’s
22 permission, knowledge, control and for Defendant’s economic benefit.

23 33. These SMS text messages made by Defendant or its agents were sent in
24 violation of 47 U.S.C. § 227(b)(1)(A)(iii).

25
26 **Class Action Allegations**

27 34. Plaintiff brings this action on behalf of himself and on behalf of all others
28 similarly situated (the “Class”).

1 35. Plaintiff represents, and is a member of the Class, consisting of:

2
3 All persons within the United States who received any text
4 messages from Defendant or its agent/s and/or employee/s and
5 revoked consent for Defendant to send texts to said person's
6 cellular telephone made through the use of any automatic
7 telephone dialing system within the four years prior to the filing
8 of the Complaint.

9
10 36. Defendant and its employees or agents are excluded from the Class. Plaintiff
11 does not know the number of members in the Class, but believes the Class
12 members number in the several thousands, if not more. Thus, this matter
13 should be certified as a Class action to assist in the expeditious litigation of
14 this matter.

15 37. Plaintiff and members of the Class were harmed by the acts of Defendant in
16 at least the following ways: Defendant, either directly or through its agents,
17 illegally contacted Plaintiff and the Class members via their cellular
18 telephones by using SMS text messages, thereby causing Plaintiff and the
19 Class members to incur certain cellular telephone charges for which Plaintiff
20 and the Class members previously paid, and invading the privacy of said
21 Plaintiff and the Class members. Plaintiff and the Class members were
22 damaged thereby.

23
24 38. This suit seeks only damages and injunctive relief for recovery of economic
25 injury on behalf of the Class, and it expressly is not intended to request any
26 recovery for personal injury and claims related thereto. Plaintiff reserves the
27 right to modify or expand the Class definition to seek recovery on behalf of
28 additional persons as warranted as facts are learned in further investigation

1 and discovery.

2 39. The joinder of the Class members is impractical and the disposition of their
3 claims in the Class action will provide substantial benefits both to the parties
4 and to the court. The Class can be identified through Defendant's records
5 and/or Defendant's agents' records.

6 40. There is a well-defined community of interest in the questions of law and fact
7 involved affecting the parties to be represented. The questions of law and fact
8 to the Class predominate over questions which may affect individual Class
9 members, including but not necessarily limited to the following:

10 Whether, within the four years prior to the filing of the Complaint,
11 Defendant or its agents sent any unsolicited SMS text message/s to the
12 Class (other than a message made for emergency purposes or made with
13 the prior express consent of the called party) using any automatic dialing
14 system to any telephone number assigned to a cellular telephone service;

15 Whether Plaintiff and the Class members were damaged thereby, and the
16 extent of damages for such violation; and

17 Whether Defendant and its agents should be enjoined from engaging in such
18 conduct in the future.

19 41. As a person who received at least one SMS text message utilizing an ATDS
20 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
21 typical of the Class. Plaintiff will fairly and adequately represent and protect
22 the interests of the Class in that Plaintiff has no interests antagonistic to any
23 member of the Class.

24 42. Plaintiff and the members of the Class have all suffered irreparable harm as a
25 result of the Defendant's unlawful and wrongful conduct. Absent a class
26 action, the Class will continue to face the potential for irreparable harm. In
27 addition, these violations of law will be allowed to proceed without remedy
28

1 and Defendant will likely continue such illegal conduct. Because of the size
 2 of the individual Class member's claims, few, if any, Class members could
 3 afford to seek legal redress for the wrongs complained of herein.

4 43. Plaintiff has retained counsel experienced in handling class action claims and
 5 claims involving violations of the Telephone Consumer Protection Act.

6 44. A class action is a superior method for the fair and efficient adjudication of
 7 this controversy. Class-wide damages are essential to induce Defendant to
 8 comply with federal law. The interest of Class members in individually
 9 controlling the prosecution of separate claims against Defendant is small
 10 because the maximum statutory damages in an individual action for violation
 11 of privacy are minimal. Management of these claims is likely to present
 12 significantly fewer difficulties than those presented in many class claims.

13 Defendant has acted on grounds generally applicable to the Class, thereby
 14 making appropriate final injunctive relief and corresponding declaratory
 15 relief with respect to the Class as a whole.

16 **First Cause of Action**
 17 **Negligent Violations Of The**
 18 **Telephone Consumer Protection Act (TCPA)**

19 **47 U.S.C. 227**

20 45. Plaintiff incorporates by reference all of the above paragraphs of this
 21 Complaint as though fully stated herein.

22 46. The foregoing acts and omissions of Defendant constitute numerous and
 23 multiple negligent violations of the TCPA, including but not limited to each
 24 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

25 47. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq.,
 26 Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and
 27 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
 28

1 48. Plaintiff is also entitled to and seeks injunctive relief prohibiting such
2 conduct in the future.

3 **Second Cause of Action**
4 **Knowing and/or Willful Of The**
5 **Telephone Consumer Protection Act (TCPA)**
6 **47 U.S.C. 227**

7 49. Plaintiff incorporates by reference all of the above paragraphs of this
8 Complaint as though fully stated herein.

9 50. Plaintiff made several requests for Defendant to stop sending text messages
10 to his cellular telephone.

11 51. The foregoing acts and omissions of Defendant constitute numerous and
12 multiple knowing and/or willful violations of the TCPA, including but not
13 limited to each and every one of the above-cited provisions of 47 U.S.C. §
14 227 et seq.

15 52. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
16 227 et seq., Plaintiff is entitled to an award of \$1,500.00 in statutory
17 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B)
18 and 47 U.S.C. § 227(b)(3)(C).

19 53. Plaintiff is also entitled to and seeks injunctive relief prohibiting such
20 conduct in the future.

21 **Prayer For Relief**

22 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff the
23 following relief against Defendant:

24 **First Cause of Action for Negligent Violation of**
25 **the TCPA, 47 U.S.C. § 227 Et Seq.**

26 - As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1),
27 Plaintiff seeks for himself \$500.00 in statutory damages, for each and every
28

1 violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

2 - Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
3 conduct in the future.

4 - Any other relief the Court may deem just and proper.

5 **Second Cause of Action For Knowing and/or Willful Violations of**
6 **the TCPA, 47 U.S.C. § 227 Et Seq.**

7 - As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
8 227(b)(1), Plaintiff seeks for himself \$1,500.00 in statutory damages, for each and
9 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

10 - Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
11 conduct in the future.

12 - Any other relief the Court may deem just and proper.

13 **Trial By Jury**

14 54. Pursuant to the seventh amendment to the Constitution of the United States of
15 America, Plaintiff is entitled to, and demands, a trial by jury.

16
17 Respectfully submitted,

Kazerouni Law Group

18
19
20 Date: August 3, 2018

By: /s/ Ryan L. McBride

Ryan L. McBride

Attorneys for Plaintiff